

From: Ezra Berch
To: Microsoft ATR
Date: 1/28/02 9:11am
Subject: Microsoft Settlement

To Whom it May Concern:

As provided by the Tunney Act, I wish to comment on the proposed settlement of the United States vs. Microsoft antitrust case.

I believe the settlement is not in the public interest and is harmful to consumers. It will allow Microsoft to continue to be an illegal monopoly. A few years ago, another antitrust case by the government against Microsoft was settled by means of a consent degree. That consent degree did almost nothing. As a result of its ineffectiveness, the current antitrust case was filed. This previous case shows that stronger penalties are needed to curb Microsoft's illegal behavior. The penalties proposed by the Settlement are not even close to being strong enough.

One of the major penalties of the settlement is the limited disclosure of some Windows API's to competing companies. However, this provision, like other parts of the settlement, is full of loopholes. For example, Microsoft need not release this information to groups which do not meet certain criteria as a business (Section 3(J)(2)(c)). However, some of the biggest threats to Microsoft, such as the Linux operating system and the Apache web server, would not be covered by this. Furthermore, Section 3(J)(1) allows Microsoft to not disclose information for security reasons. This loophole allows Microsoft to not disclose some information simply by classifying it as part of a "anti-piracy, anti-virus, software licensing, digital rights management, encryption or authentication system."

Finally, there is no real enforcement mechanism included in the settlement. Any company hurt by a major violation of the settlement by Microsoft would have to sue Microsoft if the government does not agree with its claim. Many smaller companies have nowhere near enough resources to sue a big company such as Microsoft. In addition, in the years it takes for the lawsuit and its appeals to be resolved, much damage will already have been done.

In summary, I am strongly opposed to the proposed settlement between the United States and Microsoft.

Sincerely,
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